

MINUTES

Initiative and Referendum Task Force



Dr. Emily Wanless, Chair
Senator Jim Bolin, Vice Chair

**Fourth Meeting, 2017 Interim
October 6, 2017**

**Room 412 – State Capitol
Pierre, South Dakota**

The fourth meeting of the Initiative and Referendum Task Force for the 2017 Interim was called to order by Dr. Emily Wanless on Friday, October 6, 2017, at 3:00 PM in room 412 of the State Capitol. A quorum was determined with the following members answering roll call: Pam Lynde (via phone), Will Mortenson (via phone), Senator Reynold Nesiba (via phone), Representative Kent Peterson (via phone), Representative Tim Reed (via phone), Representative Karen Soli (via phone), Duane Sutton (via phone), Yvonne Taylor, Linda Lea Viken (via phone), Secretary of State Shantel Krebs (Ex-Officio), Senator Jim Bolin, Vice Chair (via phone), and Dr. Emily Wanless, Chair (via phone). Excused: James Abbott, Senator Ernie Otten, and Attorney General Marty Jackley (Ex-Officio).

Staff members present include Wenzel Cummings, Legislative Attorney; Jason Simmons, Principal Fiscal Analyst; and Cindy Tryon, Senior Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://sdlegislature.gov>.

Approval of Minutes

A MOTION WAS MADE BY SENATOR NESIBA, SECONDED BY MR. SUTTON, TO APPROVE THE MINUTES OF THE AUGUST 23, 2017, INITIATIVE AND REFERENDUM TASK FORCE MEETING. Motion prevailed on a roll call vote with 10 AYES, 1 NAY, 2 EXCUSED. Those voting AYE: Lynde, Mortenson, Nesiba, Peterson, Reed, Soli, Sutton, Taylor, Bolin, Wanless. Voting NAY: Viken. Those EXCUSED: Abbott, Otten.

Consideration of Bill Draft

Dr. Emily Wanless, Chair, opened the meeting to discussion on bill draft #108, *An Act to create a citizen initiative review commission to review initiated measures and initiated amendments to the Constitution and to prescribe the commission's powers and duties.* ([Document #1](#))

Ms. Yvonne Taylor explained the sections of the bill as discussed in the subcommittee meeting. Section one creates and describes the makeup of the review panel. Section two establishes that the Secretary of State's office will staff the review panel. Section three sets the panel meetings in Pierre because of the ease of access. Section four says the panel will appoint five people to write the pro and con statements for the ballot measures. Section five sets the deadline for the comments to be published at least sixty days prior to the general election. Section six establishes an informational mailing that will be sent to each address in the state with a registered voter. Section seven gives the panel the authority to collect contributions from any source to pay for the informational mailing. And section eight states that the Secretary of State's duty is to provide public information for referred laws only.

Ms. Linda Lea Viken explained that the subcommittee opted for eleven members on the panel to allow for appointing subcommittees.

Representative Tim Reed said the bill drafting subcommittee had good discussions and reached compromises on several of the sections.

Representative Karen Soli thanked the subcommittee for their work stating this would make the educational process on ballot measures more robust, but added that she is concerned about finding the money to fund the review panel.

Senator Reynold Nesiba said section one allows for current legislators to be appointed to the review panel, although the ballot measures are often brought forward by people who are frustrated with the legislature. Senator Nesiba said he agrees with allowing former legislators on the panel but does not agree with allowing current legislators to be members.

Representative Reed said this bill has the members of the panel being selected by the Board of Elections and the way it is written the Board of Elections would have the ability to decide who should and should not serve on the panel.

Ms. Viken said the bill does not state that a current legislator is required to serve on the panel, but there may be issues where a current legislator would be valuable to the panel's discussion and the Board of Elections should be allowed to make that determination.

A MOTION WAS MADE BY SENATOR NESIBA, SECONDED BY SENATOR BOLIN, TO REMOVE THE WORDS "CURRENT OR" FROM SECTION ONE, LINE 8, AND PLACE A PERIOD AFTER THE WORD "COMMISSION" FOUND IN SECTION ONE, LINE 10, REMOVE THE REMAINDER OF THAT SENTENCE, AND ADD A SENTENCE STATING THAT NO CURRENT LEGISLATOR CAN SERVE ON THE REVIEW PANEL. The motion failed on a roll call vote with 4 voting AYE, 7 voting NAY, 2 EXCUSED. Those voting AYE: Lynde, Nesiba, Bolin, Wanless. Those voting NAY: Mortenson, Peterson, Reed, Soli, Sutton, Taylor, Viken. Those EXCUSED: Abbott, Otten.

Mr. Will Mortenson suggested dividing the question as the first part of the bill draft creates the review panel and the remaining sections refer to the printing and mailing of the informational brochure.

A MOTION WAS MADE BY MR. MORTENSON, SECONDED BY SENATOR BOLIN, TO DIVIDE THE QUESTION BY FIRST ACTING ON SECTIONS 1-3 AND THEN THE REMAINING SECTIONS OF THE BILL DRAFT. The motion was withdrawn by Mortenson.

Senator Nesiba said he does not want the review panel to be stacked with the two major political parties, leaving out the remaining political parties.

A MOTION WAS MADE BY SENATOR NESIBA, SECONDED BY MS. VIKEN, THAT ON PAGE ONE, LINE THIRTEEN, CHANGE THE WORD "SIX" TO THE WORD "FOUR". The motion failed on a roll call vote with 5 voting AYE, 6 voting NAY, 2 EXCUSED. Those voting AYE: Nesiba, Soli, Viken, Bolin, Wanless. Those voting NAY: Lynde, Mortenson, Peterson, Reed, Sutton, Taylor. Those EXCUSED: Abbott, Otten.

Senator Nesiba said he does not believe one hearing on each issue will be enough and that he would like to have three hearings with one each in Pierre, Sioux Falls, and Rapid City.

A MOTION WAS MADE BY SENATOR NESIBA TO REQUIRE THREE HEARINGS, ONE EACH IN PIERRE, SIOUX FALLS, AND RAPID CITY. The motion failed for lack of a second.

Dr. Wanless said the subcommittee was concerned about the workload for the staff if more than one hearing is held, and suggested finding a way to leave that decision to the review panel.

Mr. Duane Sutton said he is concerned about the costs associated with this legislation that may be passed on to the counties, such as advertising the meetings.

Representative Reed said the subcommittee was concerned about the available resources, but changing the wording to allow for more than one meeting would give the review panel the ability to decide if there is funding available to conduct more than one hearing.

A MOTION WAS MADE BY SENATOR NESIBA, SECONDED BY SENATOR BOLIN, THAT ON PAGE TWO, LINE SIX, REPLACE THE WORD "A" WITH THE WORDS "AT LEAST ONE". The motion prevailed on a roll call vote with 11 voting AYE, 2 EXCUSED. Those voting AYE: Lynde, Mortenson, Nesiba, Peterson, Reed, Soli, Sutton, Taylor, Viken, Bolin, Wanless. Those EXCUSED: Abbott, Otten.

Mr. Sutton expressed concern over the excessive cost of mailing information to every voter's household, saying section six of the bill draft could cost at least a quarter of a million dollars and could be much higher than that depending on the number of ballot measures. Mr. Sutton said there are several other ways to publish the information that would not be so costly to the taxpayers.

Ms. Viken said section seven is intended to allow for funding to be raised that will cover the costs of the mailing, and if section six is removed, section seven should also be removed.

Secretary of State Shantel Krebs told the task force that, if this law would have been in place prior to the last general election, it would have cost about \$1.85 million to do the mailing as described in this draft legislation.

A MOTION WAS MADE BY MR. SUTTON, SECONDED BY SENATOR NESIBA, TO DELETE SECTION SIX. The motion prevailed on a roll call vote with 6 voting AYE, 5 voting NAY, and 2 EXCUSED. Those voting AYE: Lynde, Mortenson, Nesiba, Peterson, Sutton, Bolin. Those voting NAY: Reed, Soli, Taylor, Viken, Wanless. Those EXCUSED: Abbott, Otten.

In response to a question, **Mr. Wenzel Cummings, Legislative Attorney**, explained that the language used in section seven of the draft legislation was based on language found in statute regarding the Capitol Beautification Commission.

A MOTION WAS MADE BY SENATOR NESIBA, SECONDED BY MR. SUTTON, TO DELETE SECTION SEVEN. The motion prevailed on a roll call vote with 9 voting AYE, 2 voting NAY, and 2 EXCUSED. Those voting AYE: Lynde, Mortenson, Nesiba, Peterson, Reed, Sutton, Taylor, Bolin, Wanless. Those voting NAY: Soli, Viken. Those EXCUSED: Abbott, Otten.

Senator Jim Bolin said section eight of the draft legislation prevents the public writing the pro and con statements, and proponents and opponents to the ballot measures should be able to write those statements.

Mr. Mortenson said he also does not agree with the review panel writing the pro and con statements.

Mr. Cummings explained that section three of this legislation requires the review panel to write an objective summary of not more than 300 words.

A MOTION WAS MADE BY MR. MORTENSON, SECONDED BY SENATOR BOLIN, TO STRIKE EVERYTHING AFTER THE WORD CONSTITUTION ON PAGE TWO, LINE 15. The motion prevailed on a roll call vote with 8 voting AYE, 3 voting NAY, and 2 EXCUSED. Those voting AYE: Lynde, Mortenson, Nesiba, Peterson, Reed, Sutton, Bolin, Wanless. Those voting NAY: Soli, Taylor, Viken. Those EXCUSED: Abbott, Otten.

Ms. Viken and Representative Soli both commented that the summary written by the review panel needs to be made available to the public or there is no need to have the document written. Secretary of State Krebs pointed out that her office's website could be used for the publication of the summary document.

A MOTION WAS MADE BY MS. VIKEN, SECONDED BY REPRESENTATIVE SOLI, THAT THE SUMMARY WRITTEN BY THE REVIEW PANEL BE MADE AVAILABLE ON THE SECRETARY OF STATE'S WEBSITE, BUT NOT BE A PART OF THE SECRETARY OF STATE'S INFORMATIONAL BROCHURE. Motion prevailed on a roll call vote with 11 AYES, 2 EXCUSED. Those voting AYE: Lynde, Mortenson, Nesiba, Peterson, Reed, Soli, Sutton, Taylor, Viken, Bolin, Wanless. Those EXCUSED: Abbott, Otten.

Representative Reed urged the members to vote for the draft legislation as amended, as this will get the conversation started with the full legislature.

A MOTION WAS MADE BY REPRESENTATIVE REED, SECONDED BY SENATOR BOLIN, TO APPROVE DRAFT #108 AS AMENDED. Motion prevailed on a roll call vote with 9 voting AYE, 2 voting NAY, and 2 EXCUSED. Those voting AYE: Lynde, Mortenson, Peterson, Reed, Soli, Taylor, Viken, Bolin, Wanless. Voting NAY: Nesiba, Sutton. Those EXCUSED: Abbott, Otten.

Senator Bolin said Senator Otten should have first option to be the Senate prime sponsor of the bill and if he prefers not to do so Senator Bolin will be the Senate prime sponsor. Representative Reed said he will be the prime sponsor in the House of Representatives and the bill should originate in the House.

Task Force Discussion and Staff Direction

Dr. Wanless thanked the task force members for their participation on the task force and their hard work addressing this issue.

Dr. Wanless explained the final report for the Initiative and Referendum Task Force will be written by Mr. Cummings and will be presented to the Executive Board at the November 13 Executive Board meeting.

Adjourn

A MOTION WAS MADE BY SENATOR NESIBA, SECONDED BY REPRESENTATIVE SOLI, THAT THE INITIATIVE AND REFERENDUM TASK FORCE MEETING BE ADJOURNED. The motion prevailed on a voice vote.

The task force adjourned at 5:00 PM.